



October 10, 2001

Ms. Jan Clark
Assistant City Attorney
City of Houston - Legal Department
P.O. Box 1562
Houston, Texas 77251-1562

OR2001-4577

Dear Ms. Clark:

You have asked whether certain information is subject to required public disclosure under the Public Information Act, chapter 552 of the Government Code. Your request was assigned ID# 155213.

The Houston Police Department received a request for particular offense reports. You assert that report number 057942390-Z, labeled as Exhibit 2, is confidential pursuant to section 552.101 of the Government Code. We assume you have released the other requested reports.

As an initial matter, subsections 552.301(a) and (b) of the Public Information Act provide:

(a) A governmental body that receives a written request for information that it wishes to withhold from public disclosure and that it considers to be within one of the [act's] exceptions . . . must ask for a decision from the attorney general about whether the information is within that exception if there has not been a previous determination about whether the information falls within one of the exceptions.

(b) The governmental body must ask for the attorney general's decision and state the exceptions that apply within a reasonable time but not later than the 10th business day after the date of receiving the written request.

As you acknowledge, this office did not receive the request for a decision within the ten business day period mandated by section 552.301(a).

When a request for an open records decision is not made within the time period prescribed by section 552.301, the requested information is presumed to be public. *See Gov't Code § 552.302.* This presumption of openness can only be overcome by a compelling demonstration that the information should not be made public. This office has long held that a compelling reason to withhold information exists, sufficient to overcome the section 552.302 presumption of openness, where the information at issue is made confidential by another source of law or affects third party interests. *See Open Records Decision Nos. 26 (1974), 150 (1977).* The application of section 552.101 is such a compelling reason.

Section 552.101 of the Government Code excepts from disclosure "information considered to be confidential by law, either constitutional, statutory, or by judicial decision." Although section 51.14(d) of the Family Code was repealed by the Seventy-fourth Legislature, Act of May 27, 1995, 74th Leg., R.S., ch. 262, § 100, 1995 Tex. Gen. Laws 2517, 2590 (current version at Family Code §§ 58.007 *et seq.*), the repealing bill provides that "[c]onduct that occurs before January 1, 1996, is governed by the law in effect at the time the conduct occurred, and that law is continued in effect for that purpose." *Id.* § 106, 1995 Tex. Gen. Laws at 2591; Open Records Decision No. 644 at 5 (1996). It appears that incident report number 057942390-Z includes records which involve juvenile offenders and concerns conduct that occurred before January 1, 1996.

At the time the conduct occurred, the applicable law in effect was section 51.14 of the Family Code, which provided, in pertinent part:

(d) Except as provided by Article 15.27, Code of Criminal Procedure, and except for files and records relating to a charge for which a child is transferred under Section 54.02 of this code to a criminal court for prosecution, the law-enforcement files and records [concerning a child] are not open to public inspection nor may their contents be disclosed to the public.

Act of May 22, 1993, 73d Leg., R.S., ch. 461, § 3, 1993 Tex. Gen. Laws 1850, 1852, *repealed by* Act of May 27, 1995, 74th Leg., R.S., ch. 262, § 100, 1995 Tex. Gen. Laws 2517, 2590. In Open Records Decision No. 181 at 2(1977), this office held that former section 51.14(d) excepted police reports which identified juvenile suspects or furnished a basis for their identification. *See also* Open Records Decision No. 394 at 4-5 (1983) (applying former Fam. Code § 51.14(d) to "police blotter" and related information). You do not indicate that the documents at issue here relate to charges for which the juvenile was transferred under section 54.02 of the Family Code¹ to a criminal court for prosecution, or

¹ Act of May 25, 1973, 63d Leg., R.S., ch. 544, § 1, 1973 Tex. Gen. Laws 1460, 1476-77, *amended by* Act of May 19, 1975, 64th Leg., R.S., ch. 693, §§ 15-16, 1975 Tex. Gen. Laws 2152, 2156-57 (adding subsections (m), (j), (k), (l)), *amended by* Act of May 8, 1987, 70th Leg., R.S., ch. 140, §§ 1-3, 1987 Tex. Gen.

that article 15.27 of the Code of Criminal Procedure² applies. Moreover, none of the exceptions to former section 51.14(d) apply to the requestor. *See* Act of May 22, 1993, 73rd Leg., R.S., ch. 461, § 3, 1993 Tex. Gen. Laws 1850, 1852 (repealed 1995) (formerly Family Code section 51.14(d)(1), (2), (3)). Accordingly, we conclude that the department must withhold report number 057942390 under section 552.101 of the Government Code.

In addition to the juvenile records, Exhibit 2 also contains criminal history information. Under *United States Department of Justice v. Reporters Committee for Freedom of the Press*, 489 U.S. 749 (1989), where an individual's criminal history information has been compiled or summarized by a governmental entity, the information takes on a character that implicates the individual's right of privacy in a manner that the same individual records in an uncompiled state do not. However, section 552.023 states that a person or a person's authorized representative has a special right of access to information that relates to the person and that is protected from disclosure by laws intended to protect the person's privacy interest. It is clear from the instant request that the requestor has a special right of access to this information under section 552.023. Accordingly, the department must release the criminal history information.

This letter ruling is limited to the particular records at issue in this request and limited to the facts as presented to us; therefore, this ruling must not be relied upon as a previous determination regarding any other records or any other circumstances.

This ruling triggers important deadlines regarding the rights and responsibilities of the governmental body and of the requestor. For example, governmental bodies are prohibited from asking the attorney general to reconsider this ruling. Gov't Code § 552.301(f). If the governmental body wants to challenge this ruling, the governmental body must appeal by filing suit in Travis County within 30 calendar days. *Id.* § 552.324(b). In order to get the full benefit of such an appeal, the governmental body must file suit within 10 calendar days. *Id.* § 552.353(b)(3), (c). If the governmental body does not appeal this ruling and the governmental body does not comply with it, then both the requestor and the attorney general have the right to file suit against the governmental body to enforce this ruling. *Id.* § 552.321(a).

If this ruling requires the governmental body to release all or part of the requested information, the governmental body is responsible for taking the next step. Based on the statute, the attorney general expects that, within 10 calendar days of this ruling, the governmental body will do one of the following three things: 1) release the public records; 2) notify the requestor of the exact day, time, and place that copies of the records will be provided or that the records can be inspected; or 3) notify the requestor of the governmental

Laws 309 (amending subsections (a), (h), (j)).

²Act of May 22, 1993, 73d Leg., R.S., ch. 461, § 1, 1993 Tex. Gen. Laws 1850-51.

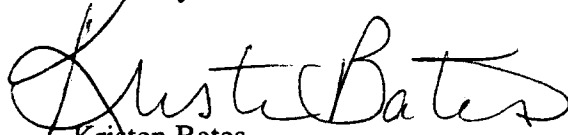
body's intent to challenge this letter ruling in court. If the governmental body fails to do one of these three things within 10 calendar days of this ruling, then the requestor should report that failure to the attorney general's Open Government Hotline, toll free, at 877/673-6839. The requestor may also file a complaint with the district or county attorney. *Id.* § 552.3215(e).

If this ruling requires or permits the governmental body to withhold all or some of the requested information, the requestor can appeal that decision by suing the governmental body. *Id.* § 552.321(a); *Texas Department of Public Safety v. Gilbreath*, 842 S.W.2d 408, 411 (Tex. App.--Austin 1992, no writ).

Please remember that under the Act the release of information triggers certain procedures for costs and charges to the requestor. If records are released in compliance with this ruling, be sure that all charges for the information are at or below the legal amounts. Questions or complaints about over-charging must be directed to Hadassah Schloss at the General Services Commission at 512/475-2497.

If the governmental body, the requestor, or any other person has questions or comments about this ruling, they may contact our office. Although there is no statutory deadline for contacting us, the attorney general prefers to receive any comments within 10 calendar days of the date of this ruling.

Sincerely,

A handwritten signature in black ink, appearing to read "Kristen Bates". The signature is fluid and cursive, with the first name "Kristen" written in a larger, more prominent script than the last name "Bates".

Kristen Bates
Assistant Attorney General
Open Records Division

KAB/seg

Ref.: ID# 155213

Encl: Submitted documents

cc: Mr. Patrick Kamel McCullough
4618 Stonemedede Drive
Friendswood, Texas 77546
(w/o enclosures)